

Message Text

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ACTION EB-11

INFO OCT-01 AF-10 ADP-00 COME-00 LOC-01 L-03 IO-12 CIAE-00

INR-10 NSAE-00 PA-03 RSC-01 USIA-12 PRS-01 RSR-01

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R 031358 Z APR 73

FM AMEMBASSY PRETORIA

TO SECSTATE WASHDC 7863

INFO AMCONSUL CAPE TOWN

LIMITED OFFICIAL USE SECTION 1 OF 2 PRETORIA 1069

E. O. 11652: N/ A

TAGS: EIND, SF, US

SUBJECT: COPYRIGHT PROTECTION OF MOTION PICTURE FILMS

REF: STATE 48708 AND PREVIOUS

CAPE TOWN FOR EMBASSY

SUMMARY: DFA REPLY TO EMBASSY NOTE REAFFIRMS 1924 BILATERAL UNAFFECTED BY 1965 SA COPYRIGHT LAW BUT CLAIMS APPLICATION 1965 LAW TO US WOULD REQUIRE ADDITIONAL NEGOTIATIONS. KEY COPYRIGHT OFFICIAL (SCHOMAN) DOES NOT RULE OUT NEW PROCLAMATION EXTENDING 1965 ACT PROVISIONS ON MOTION PICTURES TO US ON BASIS US PROTECTION THIS CATEGORY WORKS. HE CLAIMED OBSTACLE SATISFACTORY PROCLAMATION, HOWEVER, FROM REQUIREMENT US MANUFACTURE IN CASE LITERARY WORKS, CONDITION NOT REQUIRED BY SA. HE PROPOSED BILATERALLY APPLYING TERMS UNIVERSAL CONVENTION (TO WHICH SAG FEELS IT UNABLE ADHERE BECAUSE OF UNESCO PROBLEMS) OR IN LIEU THEREOF FINDING WAY OUT OF US MANUFACTURING REQUIREMENT, IN WHICH CASE PROCLAMATION APPLYING SA 1965 LAW IN ENTIRETY FOR US COULD BE ISSUED. EMBOFF AVOIDED ANY SUGGESTION NEW NEGOTIATION FEASIBLE OR NECESSARY TO SOLVE EXISTING PROBLEM; HOWEVER, VIEWS AND GUIDANCE ON POINTS RAISED ARE REQUESTED FOR FURTHER MEETING HOPED TAKE PLACE NEXT WEEK.

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1. SOUTH AFRICA DEPT FOREIGN AFFAIRS NOTE DATED MARCH 16, 1973, RECEIVED MARCH 20 REFERS EMBASSY NOTE 563, STATES PROCLAMATION 118 OF 1924 CONTINUES " TO HAVE EFFECT AS IF THE 1965 ACT HAD NOT BEEN PUBLISHED", AND GOES ON THAT " STATUS QUO PRIOR TO COMING INTO OPERATION OF THE 1965 ACT IS MAINTAINED SO FAR AS USA IS CONCERNED". ADDS THAT IF US DESIRES HAVE PROVISIONS OF 1965 ACT APPLIED " FRESH NEGOTIATIONS WILL BE REQUIRED". WILL POUCH NOTE UNDER COVER AIRGRAM.

2. IMPLICATIONS DFA NOTE DISCUSSED AT LENGTH WITH SCHOMAN, HEAD SA OFFICE DEALING COPYRIGHT, MARCH 31 DURING HIS BRIEF RETURN PRETORIA FROM CAPE TOWN WHERE HE HAS REMAINED PREOCCUPIED WITH WORK ON NEW COMPANY LAW. (EARLIER FOLLOW- UP WITH HIS OFFICE PER PRETORIA 0035 ONLY PRODUCED INDICATION NOTE FORTHCOMING). SCHOMAN RAISED SEVERAL QUESTIONS, EXPRESSING HOPE WOULD BE POSSIBLE DISCUSS FURTHER ABOUT APRIL 9 OR 10 WHEN HE WOULD RETURN PRETORIA AGAIN.

3. IN MARCH 31 DISCUSSION, EMBOFF BEGAN BY NOTING ABSENCE REFERENCE IN NOTE TO MOTION PICTURE QUESTION AS SUCH. OUTLINED THAT US HAD GIVEN CLEAR CUT PROTECTION FROM OUTSET BILATERAL AND WHAT WAS DESIRED WAS CLARIFICATION ESTABLISHING RECIPROCAL SA PROTECTION. SCHOMAN REGRETTED LACK TIME COMPLETE DEFINITIVE WORK ON PROBLEM BUT SET FORTH FOLLOWING AS RESULTS HIS DISCUSSIONS LEGAL ADVISOR AND STUDY TO DATE.

4. OBVIOUSLY, SCHOMAN SAID, BILATERAL GAVE SUCH PROTECTION IN SA TO MOTION PICTURES AS WAS PROVIDED IN BRITISH 1911 ACT AND RELEVANT PORTION 1916 SA ACT. IN EARLIER DISCUSSIONS HE HAD INDICATED INTENTION IN REPLY TO EMBASSY' S NOTE TO REFER TO THE RECENT REGULATION PUTTING THE BURDEN OF PROOF ON FILM PIRATES (A-162, AUG 8, 1972). FROM HIS CONSULTATION WITHIN SAG, HE NOW THOUGHT IT CLEAR THIS WOULD NOT APPLY TO US PARTY IN ABSENCE NEW PROCLAMATION. WHAT HE WISHED TO DO WAS ARRANGE TO ISSUE SA PROCLAMATION EXTENDING OPERATION SA 1965 ACT IN ITS ENTIRETY UNDER SECTION 32 OF ACT. IN RESPONSE QUESTION, HE DID NOT RULE OUT POSSIBILITY DOING THIS IN LIMITED CONTEXT MOTION PICTURE COPYRIGHT PROTECTION, SINCE US CLEARLY AFFORDED PROTECTION TO SUCH FILMS. SA PARTIES DID, HOWEVER, HAVE PROBLEMS IN CONNECTION US COPYRIGHT AND THESE HAD BEEN POSED AS OBSTACLE TO PROCLAMATION. SPECIFICALLY, US REQUIRED MANUFACTURE IN US (I. E., SETTING TYPE AND PRINTING) OF LITERARY LIMITED OFFICIAL USE

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WORKS FOR FULL TERM PROTECTION WHEREAS SA HAD NO SUCH

REQUIREMENT.

SCHOMAN CLAIMED HIS CONCERN WAS TO PROVIDE LEGALLY TIGHT AND EFFECTIVE PROTECTION AND HE THOUGHT THIS BEST DONE BY CLEARING UP THESE ISSUES.

5. NOTING THAT UNIVERSAL CONVENTION OBIATED CERTAIN FORMALITIES, INCLUDING REQUIREMENT FOR MANUFACTURE, SCHOMAN FIRST RAISED QUESTION WHETHER US AND SA COULD AGREE TO APPLY ITS TERMS TO ONE ANOTHER ON BILATERAL BASIS. HE REVIEWED PRESUMED OBSTACLES TO SA ADHERENCE UNIVERSAL CONVENTION, E. G. UNESCO AS GOVERNING BODY WOULD REJECT SA ADHERENCE. (SA HAD DONE PREPARATORY WORK TO ADHERE BUT DFA HAD DECIDED FURTHER ACTION NOT FEASIBLE. IN ADDITION TO FACT SA WITHDRAWN FROM UNESCO, ONE OF THE CONCERNS WAS FACT 1965 LAW INCLUDED PROVISION APPLYING IT TO SWA).

6. ALTERNATIVELY, SCHOMAN ASKED IF THERE WAS A WAY AROUND THE REQUIREMENT FOR US MANUFACTURE IN CASE OF LITERARY WORKS SO THAT ASSURANCE OF RECIPROCITY WITHOUT THIS FORMALITY COULD BE GIVEN. HE ASKED ALSO IF US WOULD HAVE ANY PROBLEM IN REDUCING THE PERIOD FOR " SIMULTANEOUS" PUBLICATION TO 30 DAYS (FROM 60 DAYS IN THE 1924 PROCLAMATION) AS IN THE BERNE CONVENTION AND THE 1965 SA LAW. IF THESE POINTS COULD BE COVERED, HE SAID, HE WOULD HAVE NO PROBLEM IN ARRANGING A COMPREHENSIVE PROCLAMATION.

7. EMBOFF NOTED US POSITION AS HE UNDERSTOOD IT OPPOSING NEW BILATERAL AGREEMENTS. SCHOMAN ACKNOWLEDGED HE AWARE THIS BUT HAD WISHED MENTION POSSIBILITY ACTION ALONG LINES PARA 5 ANYWAY.

8. SCHOMAN ALSO MENTIONED INTER ALIA SA AMENDING LEGISLATION TO REMOVE " PIRACY" CLAUSE FOR WHICH THEY HAD BEEN SHARPLY CRITICIZED. HE ALSO WORKING ON BETTER PROTECTION OF PHONOGRAMS AND TO GIVE MORE COMPREHENSIVE PROTECTION IN THE ACT ON PERFORMERS.

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ACTION EB-11

INFO OCT-01 AF-10 ADP-00 COME-00 LOC-01 L-03 IO-12 CIAE-00

INR-10 NSAE-00 PA-03 RSC-01 USIA-12 PRS-01 RSR-01

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R 031358 Z APR 73
FM AMEMBASSY PRETORIA
TO SECSTATE WASHDC 7864
INFO AMCONSUL CAPE TOWN

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9. COMMENT: SATISFACTORY FOCUS ON THIS MATTER BY SAG HAS BEEN IMPAIRED BY SCHOMAN'S TDY ON THE COMPANY LAW REVISION. (DFA AND OFFICIALS IN DEPT COMMERCE HAVE DISCLAIMED SUFFICIENT TECHNICAL EXPERTISE ADDRESS QUESTIONS). IN DISCUSSION, EMBOFF WAS CAREFUL AVOID ACCEPTING IDEA THAT A NEW NEGOTIATION FEASIBLE OR NECESSARY TO SOLVE EXISTING PROBLEMS. CONTINUING LOSS BY AMERICAN FILM COMPANIES TO PIRATES AND US PROTECTION FROM BEGINNING EMPHASIZED. SINCE, HOWEVER, SCHOMAN EXPECTS BE IN PRETORIA APRIL 9 OR 10, WOULD APPRECIATE GUIDANCE AND INFORMATION, ESPECIALLY ON FOLLOWING POINTS:

(A) WOULD THERE BE ANY MERIT TO AND WOULD US LEGISLATION PERMIT ANYTHING ALONG LINES OF APPLYING PROVISIONS UNIVERSAL CONVENTION WITHIN FRAMEWORK EXISTING BILATERAL?

(B) DOES PRESENT US COPYRIGHT PROTECTION TO SA'S REFLECT US LEGISLATION AS CURRENTLY, REPEAT CURRENTLY, ENACTED AND AMENDED OR IS IT LIMITED TO PROTECTION PROVIDED BY LEGISLATION AT TIME 1924 PROCLAMATION ISSUED. IF FORMER, WOULD WISH ARGUE WITH SCHOMAN THAT 1965 ACT INTERNAL AND THAT BASIC PRINCIPLE OF BILATERAL IS PROTECTION EQUIVALENT THAT GIVEN OWN NATIONALS AND, THEREFORE, PROCLAMATION EXTENDING ITS COVERAGE IS ONLY AN APPROPRIATE CLARIFICATION.

(C) IS THERE SUFFICIENT SCOPE IN US LEGISLATION TO COVER DEALING WITH US MANUFACTURE REQUIREMENT FOR LITERARY WORKS IN MANNER SCHOMAN SUGGESTS AND COULD THIS BE CONSIDERED? (EMBASSY AWARE OF FIVE YEAR "AD INTERIM" COPYRIGHT AND PLANS POINT THIS LIMITED OFFICIAL USE

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OUT IN NEXT DISCUSSION WITH SCHOMAN). SIMILARLY, WHAT WOULD BE POSITION ON 30 VS 60 DAY "SIMULTANEOUS" CLAUSE? COULD EITHER/ OR BOTH OF THESE QUESTIONS BE DEALT WITH IN CONTEXT EXISTING BILATERAL?
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